

Testimony of James B. Clawson

On Behalf of Wine Institute

**Before
Committee on Agriculture
US House of Representatives**

On

**Geographical Indications and the Potential
Effect of Proposals by Countries in the World
Trade Organization Agricultural Negotiations
on United States Agriculture and Food Exports**

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INTRODUCTION

Mr. Chairman and distinguished Members of the House Committee on Agriculture, my name is James B. Clawson and I am the Chief Executive Officer for JBC International, a Washington business and trade consulting firm. I also serve as the international trade advisor to Wine Institute, a trade association of over 600 California wineries, representing more than 80 percent of the US wine industry and 95 percent of all US wine exports.

It is a pleasure for me to be here today and I applaud you, Chairman Goodlatte, for holding this hearing. During my career in the US government and as a business advisor I have been providing strategic advice about geographic indications since 1973. The issue of geographic indications and how they should be protected, if at all, needs more review and discussion. While there was attention given to the issues surrounding the use of geographic indications as an intellectual property right during the development of the Trade Related Aspects of Intellectual Property Rights Agreement (TRIPS) in the Uruguay Round of World Trade Organization (WTO) negotiations, the use and protection of geographic indications as a means to provide producers the monopolistic use of those terms has not received enough international exposure.

OVERVIEW

The ramifications of some of the current proposals developed in both the World Trade Organization (WTO) could severely hamper the marketing of US wine in the US and in foreign countries. The proposals as put forth by the European Union (EU) in the TRIPS Council and the Agriculture negotiations will eliminate the use by US producers of many terms that are used today to describe their products to the consumer. In addition, their proposals will seek to invalidate any existing trademark that could be considered “similar” to a geographic indication. In effect, this proposal seeks to establish an anti-competitive monopoly for EU wine producers and other European agriculture interests by excluding the use of many generic and common terms legitimately used by producers in the United States and elsewhere.

BACKGROUND

The TRIPS Agreement and Geographical Indications

The TRIPS agreement defines geographical indications as:



“Geographical indications are, for the purposes of this Agreement, indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.”

Provisions are already made for goods where:

- the use geographic indications is used in good faith
- geographic terms are customary in common language
- geographic indications cease to be protected by the country of origin

Article 23.4 of the TRIPS Agreement calls for WTO members to establish a system of “notification and registration” for geographical indications for wines and spirits. In the Doha Ministerial Mandate, ministers agreed to conclude negotiations on this register by the WTO Fifth Ministerial meeting in Cancun, Mexico in September of 2003. The WTO TRIPS Council Special Session is current negotiating such a system of notification and registration for wines and spirits.

There has been discussion amongst WTO members concerning the extension of such a system of notification and registration to products other than wines and spirits. The position of Wine Institute is simple: any discussions related to the question of extension must be kept separate from the mandated discussions on the notification and registration system called for in TRIPS Article 23.4.

Agriculture Negotiations

A great concern for US winemakers is the EU push to include geographical indications as part of the WTO Agriculture negotiations. The EU has prepared a list of over 40 geographical indications they want all WTO members to agree to protect as part of the WTO agriculture negotiations, the vast majority of the terms being for wine. The EU’s position is that geographic indications should have superior standing over trademarks and other intellectual property with governments being obligated to enforce those rights.

The EU is including protection of geographical indications as a mandatory part of the WTO agriculture negotiations and have indicated they will not move forward on other agriculture negotiations (tariffs, subsidies, etc.) unless WTO members agree to protect their geographical indications.

There is nothing in the TRIPS Agreement that provides greater protection for geographical indications over any other form of intellectual property such as trademarks. As a result, will owners of patents, trademarks and copyrights be entitled to similar protection by all WTO member governments? And why just agriculture geographical

indications? Will owners of any business be protected by its governments against the use of its trademark or brand name?

Enforcement and Enforcement Regimes

Non-EU countries, particularly the US, should be most concerned with the practical enforcement called for under the EU plan to protect geographic indications. The EU has proposed a list or register system that when a term is placed on the register, all WTO countries are then obligated to protect that term's exclusive use in their country. The EU has in place an infrastructure to administer its own wine and agriculture geographic indications. It does not have in place a system to protect other country geographic indications. Members of the WTO should be concerned with their ability to sustain such a regime. If the EU cannot manage a system to protect terms from 130 countries, how will developing countries manage that new obligation? The cost will be prohibitive.

Wine

Since the 19th century the member states of the EU have tried to obtain intellectual property rights for wine geographical indications and to make those terms superior to trademarks. More importantly, these countries have tried to make geographical indications a government enforced public right rather than an owner-enforced right as with the case of other forms of intellectual property. The historic government obligation to private intellectual property rights holders is to create the regulatory and judicial "rule of law" environment where those private right owners can enforce and protect their rights. Nevertheless, current EU law provides that geographic indications for wine are enforceable by the government and are superior to trademarks, even existing trademarks (unless they are over 100 years old).

Experience has shown that efforts to change these rights from private rights to government or public rights enforced by government action at the international level have not been successful. Various international conventions, such as the Lisbon Convention, created by the French and other European countries address international protection for geographical indications but only a few countries, mostly European, ever became signatories to the conventions.

The EU had tried to push a system for geographical indications protection in the World Intellectual Property Organization (WIPO). Their proposals met resistance from WIPO member states. Being unsuccessful in the WIPO in selling their concept of government enforced intellectual property rights to the rest of world, the EU brought its position to the WTO in the Uruguay Round TRIPS negotiations. They successfully obtained intellectual property status for geographic indications but were not successful in making those rights superior to trademarks or enforceable by governments. ***WTO members did***

not agree that geographic indications should have greater rights than other intellectual property private rights. By raising geographic indications in the agriculture talks the EU is now making another effort to advantage its agriculture sector even though it has failed in its previous attempts.

For the wine sector the EU's initiatives and positions in trade negotiations have been even more blatant in their effort to provide advantages to EU producers. Some of these initiatives have included implementation of regulations on labeling that restrict the use of terms like "table wine," and other information to only EU producers; introducing restrictions on the use of "traditional terms" like "chateau" and "ruby"; eliminating the use of generic geographic indications; and providing to geographic indications greater intellectual property rights than trademarks, i.e. ignoring first in time first in right principles.

The EU has also conducted negotiations with or imposed pressure on wine producing and traditionally non-wine producing nations to adopt EU standards and labeling practices that will exclude other wine producing countries' products. As compensation in bilateral negotiations with wine producing countries, the EU has provided for guaranteed access to the EU market through waivers of the non-tariff barriers the EU created in their winemaking regulations that should not have been allowed in any event under WTO obligations. In exchange for this market access, the EU has demanded that these countries provide protection for the thousands of EU geographical indications for wine and provide for exclusive use of geographical indications even over pre-existing trademarks.

Processed High-Value Agriculture Products

The introduction of the debate over the use of geographic indications in the WTO agriculture talks is in keeping with similar efforts made by the EU in the past to provide for protection of its high-value agriculture products in international markets. EU initiatives for wine, cheese and other high-value products have included the provision of domestic and export subsidies, maintenance of high import duties to protect domestic producers, and the enforcement of unnecessary and cumbersome standards and labeling restrictions. Further concern has risen from the debate over practical barriers caused by the EU's so called "precautionary principle," where import restrictions are based upon standards that are not always grounded on WTO health or safety standards.

Knowing that it must give up its trade distorting subsidies and other protections, and knowing that its product standards and labeling requirements are under attack as being contrary to WTO rules, the EU's current push to reserve the use of terms, such as geographic indications and "traditional expressions" is an attempt to create another mechanism to compensate domestic producers for the loss of its current protection. The

EU proposal includes protection for the use of geographical indications like “feta” cheese for Greece and so-called “traditional expressions”. Many of the terms that the Europeans are now claiming exclusive use of have become generic among world consumers in which the name describes a product that is produced in a certain style. For the so-called traditional expressions, the European Union is seeking exclusive use of terms that may be described as “adjectives” that have no link to a geographical place name.

CURRENT DEBATE

The ramifications of some of the current proposals developed in both the World Trade Organization (WTO) could severely hamper the marketing of US wine in the US and in foreign countries. The proposals as put forth by the European Union (EU) will eliminate the use by US producers of many terms that are used today to describe their products to the consumer. In addition, the proposals will seek to invalidate any existing trademark that could be considered confusingly similar to a geographic indication. In effect, this proposal seeks to establish an anti-competitive monopoly for EU wine producers and other European agriculture interests for the use of many generic and common terms to the exclusion of legitimate use by producers in the United States and elsewhere including use of existing trademarks.

For the past several years the EU and a number of its trading partners have embarked on a clear international strategy to further the competitive advantage both domestically and internationally for their high-value agriculture sector. This strategy is most easily identified in current EU bilateral negotiations concerning wines and spirits with a number of wine producing countries including Canada, Chile and South Africa. The recent EU – Canada wine and spirits agreement provides for the elimination of the use of geographic European terms that had previously been found to be generic terms by Canadian courts. It is not clear what affect this agreement will have on US wine sales in Canada since the Canadian authorities have not said if they intend to enforce the elimination of the use of those terms on third country imports. If they do, there will be a loss of sales in the Canadian market for US wine.

With their proposal for geographic indications in the Doha Development Round agriculture talks, it appears that the EU is pushing its internal policy to WTO members which will govern geographical indications for agricultural products. While government policy to promote its products is understandable, some of the techniques and methods being used are not fair nor do they seem to conform to agreed international obligations.

The EU’s strategy to negotiate this issue in the agriculture talks provides them ground for a higher degree of leverage within the context of the Doha Development Round. EU officials are well aware that access to its agriculture market is key to obtaining support from the developing countries in reaching a successful conclusion to the Doha Round.

To strengthen their leverage, EU officials are imposing the condition that it will not negotiate any agriculture concessions unless WTO members agree to protect a list of European geographic indications in the agriculture negotiations. This demand is **in addition** to the European demands for a mandatory system of notification and registration for wine and spirits and other products in the TRIPS negotiations. Thus, if developed and developing countries want access to the EU consumer market, it must first grant the EU agriculture producers the monopoly they want on the use of descriptors of their products worldwide. This condition is unacceptable and should be rejected.

DISCUSSION

To restate what we described above, the debate over geographic indications is a push to provide additional leverage to construct market access barriers and protect domestic producers in those countries wishing to protect their domestic industry. It is also indicative of a larger clash between traditions of a government-controlled economy and the consumer-driven demand of today's more open global economy.

The implications of the EU proposal over geographic indications reach farther than wines, spirits and cheeses. Economic blocks, like the EU, and developing countries understand the potential to influence the global marketplace by inhibiting consumer driven demand for products commonly recognized by consumers. European country officials have stated that it is time to "reclaim" their rights to certain terms. It has been stated a restaurant claims to be an "Italian" restaurant the all of the products served must come from Italy. Following this logic all "French Roast" coffee must be roasted in France. Does this mean that all "Chinese Food" must come from China?

CONCLUSION

In the international arena, the Europeans and their partners on this issue are trying to frame the debate concerning geographical indications as either supporting protection or not supporting protection of geographical indications.

From the US wine industry perspective, we strongly support and value our geographical indications. Some of the most beautiful and well-known wine regions of the world are located in California; Napa, Sonoma, Monterey, etc. have all become synonymous with high-quality wine.

The issue is not whether or not to protect geographical indications. The issue is how to provide protection for geographical indications.

WTO members are obliged to develop a system of notification and registration for wine and spirit geographical indications (TRIPS Article 23.4). We can develop a workable system but we need to be cognizant of the fact that nothing in the TRIPS agreement or any other WTO agreement provides for greater protection for geographical indications over any other form of intellectual property such as trademarks or brand names.

And in order for such a system to really work it cannot be too burdensome or infringe upon other intellectual property rights. The US wine industry strongly supports the US, or “Joint”, proposal in the TRIPS Council for a system of notification and registration.

Furthermore, we vigorously object to the European Commission demand that protection of geographical indications be included as part of the WTO Agriculture negotiations. The issue of protection of geographical indication is currently taking place within the TRIPS Council. The members of the TRIPS Council are familiar with international laws and regulations governing geographical indications and other forms of intellectual property.

We thank you very much for the opportunity to comment and to share our views with the Committee. If you should have any questions or need more information, I welcome you to contact me at any time.